

**UNITED STATES DEPARTMENT OF COMMERCE****United States Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/317,480 05/24/99 PEELE

J P-4015.279/P

EXAMINER	
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WM02/0910

PERSINO, R	
ART UNIT	PAPER NUMBER

2681  
DATE MAILED:

09/10/01

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks**

**Advisory Action**Application No.  
**09/317,480**

Applicant(s)

**PEELE**

Examiner

**Raymond B. Persino**

Art Unit

**2681**

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Aug 10, 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a)  The period for reply expires 3 months from the mailing date of the final rejection.
- b)  In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search. (See NOTE below);
  - (b)  they raise the issue of new matter. (See NOTE below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

4.  Applicant's reply has overcome the following rejection(s):  
Claims 21-26, see "Examiner's Comments"
5.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in separate, timely filed amendment cancelling the non-allowable claim(s).
6.  The a)  affidavit, b)  exhibit, or c)  request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
see "Examiner's Comments"
7.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8.  For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):  
Claim(s) allowed: 10-26  
Claim(s) objected to: \_\_\_\_\_  
Claim(s) rejected: 1-9 and 27-30
9.  The proposed drawing correction filed on \_\_\_\_\_ a)  has b)  has not been approved by the Examiner.
10.  Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
11.  Other:

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## EXAMINER'S COMMENTS

### *Response to Arguments*

1. Applicant's arguments filed 8/10/2001, regarding claims 1, 6 and 27 have been fully considered but they are not persuasive.

Regarding claim 1, the examiner's use of the Yu reference was for no other purpose than to evidence the fact that it is well known in the art to sector a cell and to divide the frequency group assigned to the cell into subgroups assigned to the sectors of the cell. Surely the applicant will not disagree on this point for the applicant has already disclosed that using sectored cells in the described manner is "common practice" (see Background of the invention, pages 1 and 2). Given a sectored environment, one of skill in the art would appreciate the problem of having one sector needing more than its allocated channels while other sectors have free channels. Thus, there is motivation for one of ordinary skill in the art to seek out a teaching to overcome this problem. In doing so, one of ordinary skill in the art would look at both teachings that could be directly applied and at teachings that solve the same problem in an abstract sense. Benbeniste solves the same problem in an abstract sense. From Benbeniste, one of ordinary skill in the art would be taught the concept of dynamic channel allocation among cells in a network. Incidentally, this is also a well known concept as evidenced by the existence of 455/452 in the US Patent classification schedule. One of ordinary skill in the art would appreciate that cells are fixed regions within the larger fixed region of a network. Similarly, sectors are small fixed regions with

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the larger fixed region of a cell. Further, one of ordinary skill in the art would recognize that the benefits gained by methodologies used in the cell/network relationship would analogously be achieved when utilized in a sector/cell relationship. Thus, one of ordinary skill in the art would adapt the concept of Benbeniste's dynamic channel allocation among cells in a network to be dynamic channel allocation among sectors in a cell. This would overcome the problem stated above and allow for maximum traffic capacity. Therefore, the examiner reasserts that the concept of using sectored cells in Yu and the concept of dynamic channel allocation among cells in a network when adapted in combination meet the limitations set forth in claim 1. Further the combination is obvious for the reasons set forth above.

Regarding claim 6, see the examiner's comments regarding claim 1.

Regarding claim 27, the applicant made no argument.

***Allowable Subject Matter***

2. The response to Final Office Action will be entered upon the timely submission of a Notice of Appeal and an Appeal Brief with the requisite fees, at that time Claims 21-26 would be allowed.

3. The following is a statement of reasons for the indication of allowable subject matter:

The examiner found the applicant's arguments for claims 21 persuasive. However, the examiner would like to stress that the reasons for the indication of allowable subject matter go beyond that argued by the applicant, namely the deficiency of element "g" by Reed. The examiner

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would like to point out that element "g" is suggested by Benbeniste, see comments above.

However, element "g" in conjunction with elements "f" and "h" when combined with elements "a-e" is a unique combination of elements which is neither taught nor suggested by the prior art.

***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Raymond Persino whose telephone number is (703) 308-7528. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 5:30 PM. The examiner can also be reached on alternate Fridays from 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dwayne Bost, can be reached on (703) 305-4778. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

**Any response to this action should be mailed to:**

**Box AF**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

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(703) 872-9314, (for formal communications intended for entry please  
label "EXPEDITED PROCEDURE," and informal or draft  
communications, please label "PROPOSED," or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,  
Arlington, VA., Sixth Floor (Receptionist).

Ray Persino 

September 7, 2001



NAY MAUNG  
PRIMARY EXAMINER